

Section

- 12.01: Scope and Purpose
 12.02: Definitions
 12.03: Certification
 12.04: General Requirements for An Assisted Living Residence
 12.05: Record Requirements
 12.06: Staffing Requirements
 12.07: Training Requirements
 12.08: Resident Rights and Required Disclosures
 12.09: Compliance Reviews of Assisted Living Residences
 12.10: Administrative Review: Procedure
 12.11: Right of Entry by EOEa and Contracting Agencies
 12.12: Penalties for Uncertified Operation
 12.13: Advisory Council
 12.14: Inapplicability of Certain Laws and Regulations to Assisted Living Residences

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12.01: Scope and Purpose

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651 CMR 12.00 sets forth the requirements for Certification, renewal of Certification and suitability for Applicants and Sponsors of Assisted Living Residences. The purpose of 651 CMR 12.00 is to promote the availability of services for elderly or disabled persons in a residential environment; to promote the dignity, individuality, privacy and decision-making ability of such persons and to promote for their health, safety, and welfare; and to promote continued improvement of Assisted Living Residences. Assisted Living Residences are an important part of the spectrum of living alternatives for the elderly in the commonwealth, and that they should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities, and should support the goal of aging in place through services, available either directly or through contract or agreement, to compensate for the physical or cognitive impairment of the individual while maximizing his or her dignity and independence.

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651 CMR 12.00 sets forth the standards for premises which, in part or in total, constitute an Assisted Living Residence in the Commonwealth of Massachusetts and provides penalties for operating such premises without Certification.

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Although the provisions of St. 1994, c. 354 and 651 CMR 12.00 do not apply to the following entities and premises for the original facilities and services for which said entities and premises were originally licensed or organized to provide, if any such entity seeks to have all or part of its premises advertised, operated or maintained as an Assisted Living Residence it must apply to become Certified in accordance with 651 CMR 12.03:

- (a) Convalescent homes, nursing homes, rest homes, charitable homes for the aged or intermediate care facilities for persons with developmental disabilities licensed pursuant to M.G.L. c. 111, s. 71;
- (b) Hospices licensed pursuant to the provisions of M.G.L. c. 111, s. 57D;
- (c) Facilities providing continuing care to residents as defined by M.G.L. c. 93, s. 76;
- (d) Congregate housing authorized by M.G.L. c. 121B, s. 39;

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(e) Group homes operating under contract with the Department of Mental Health or the Department of Developmental Service;

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(f) Housing operated for only those duly ordained priests, or for the members of the religious orders of the Roman Catholic Church in their own locations, buildings, Assisted Living Residence or headquarters to provide care, shelter, treatment and medical assistance for any of the said duly ordained priests or members of the said religious orders. The provisions of St. 1994, c. 354, are not applicable to elderly housing as defined by 651 CMR 12.02.

12.02: Definitions

When used in 651 CMR 12.00, unless the context otherwise requires, the following terms shall have the following meanings:

Activities of Daily Living (ADL). Tasks related to bathing, dressing, grooming, ambulation, eating, toileting and other similar tasks related to personal care needs.

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Act or the Act, M.G.L. c. 19D and St. 1994, c. 354, (An Act Establishing Assisted Living Residences). ¶

Administrative Fee: Any charge billed to and payable by a Resident as a condition of admission, excluding room, board, and services.

Alteration. Any of the following changes made after the date of the Residence's last Certification:

- (a) a change in the number of Units;
- (b) a substantial change in the configuration of Units;
- (c) a substantial change in the premises; and
- (d) a substantial change in the operating plan.

Applicant. A person or legal entity applying to EOEa for Certification as a Sponsor of an Assisted Living Residence.

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Assisted Living Residence or Residence. Any entity, however organized, whether conducted for profit or not for profit, which meets all of the following criteria:

- (a) provides room and board; and
- (b) provides, directly by its employees or through arrangements with another organization which the entity may or may not control or own, Personal Care Services for three or more adults who are not related by consanguinity or affinity to their care provider; and
- (c) collects payments or third party reimbursements from or on behalf of Residents to pay for the provision of assistance with the Activities of Daily Living, or arranges for the same.

Bathing Facility. A room equipped with a showerhead or a bathtub to enable one person to take a shower or a bath.

Certification. EOEA's initial approval, or subsequent renewal of that approval, of the qualifications of an Applicant or Sponsor to operate and maintain an Assisted Living Residence subject to the requirements of St. 1994, c. 354 and 651 CMR 12.00 et seq.

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Certified Provider of Ancillary Health Services. A person or legal entity certified to provide home health care services or hospice care services under Title XVIII of the Social Security Act 49, Stat. 620

(1935) or an entity licensed under M.G.L. c. 111 that provides services such as physician, pharmacist, restorative therapies, podiatry, hospice, and home health aide.

Computation of Time. In computing any period of time under 651 CMR 12.00, the day of the act which initiates the running of the time period shall not be counted. The last day of the time period shall be included unless it is a Saturday, Sunday or legal holiday or any other day on which EOEA is closed, in which case the period shall run until the end of the next business day. When the time period is less than seven days, any days when EOEA is closed shall be excluded from the computation.

Controlled Substances. For the purposes of 651 CMR 12.00, controlled substances shall include all Class II controlled substances identified by 21 U.S.C. c. 13, *et seq.*, and any Class I controlled substances identified by 21 U.S.C. c. 13, *et seq.*, that may be legally prescribed according to the laws of the Commonwealth.

Elderly Housing. Any residential premises available for lease by elderly or disabled individuals which is financed or subsidized in whole or in part by state or federal housing programs established primarily to furnish housing rather than housing and personal services, and which was never licensed under M.G.L. c. 111.

Instrumental Activities of Daily Living (IADL). Tasks related to meal preparation, housekeeping, clothes laundering, shopping for food and other items, telephoning, use of transportation, and other similar tasks related to environmental needs.

Legal Representative. Guardian, Conservator, or attorney in-fact under a Power of Attorney, as appropriate.

Limited Medication Administration (LMA). The administration of medication to a Resident which is not otherwise prohibited by M.G.L. c. 19D or 651 CMR 12.00 *et seq.* LMA may only be provided in a Residence by a family member, an individual designated in writing by the Resident or the Resident's Legal Representative, a practitioner as defined in M.G.L. 94C, or a nurse registered or licensed under the provisions of M.G.L. c. 112, §74 or §74A to the extent allowed by laws, regulations and standards governing nursing practice in Massachusetts.

Lodging. The provision of a single or a double living Unit.

Manager. The individual who has general administrative charge of an Assisted Living Residence.

Modification of Certification. A change to or limitation on the scope of a Sponsor's authority to operate an Assisted Living Residence.

Mutual Aid. A coordinated and collaborative effort between other local Assisted Living Residences to support each other in evacuations and resource/asset needs. This includes identifying an appropriate number (enough to receive 100% of your residents in an extended evacuation) of Residences outside of 50 miles from the location.

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Chemical Restraint. Any drug that is used for Discipline or Convenience, not required to treat medical symptoms, and not requested by the Resident. ¶
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Convenience. Any action taken to control or manage a Resident's behavior with lesser effort by the Assisted Living Residence that is not in the Resident's best interest. ¶

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Cooking Capacity. Access to a refrigerator, sink, and heating element. ¶
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Discipline. Any action taken by the Assisted Living Residence for the purpose of punishing or penalizing a Resident. ¶

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Newly Constructed. A building or buildings for which a person or entity received a building permit on or after June 1, 1995 and seeks Certification as an Assisted Living Residence; provided that a building or buildings for which a person or entity at any time is or was providing facilities or services other than those of an Assisted Living Residence shall not be considered newly constructed for the purpose of the physical requirements for an Assisted Living Residence under M.G.L. c. 19D, s. 16 or 651 CMR 12.04(1).

Personal Care Service. Assistance with one or more of the Activities of Daily Living and Self-administered Medication Management, either through physical support or supervision. Supervision includes reminding or observing Residents while they perform activities.

Residency Agreement. The written contract between an Assisted Living Residence and a Resident or prospective Resident on either a temporary (e.g., for respite care) or more permanent basis.

Resident. An individual who resides in an Assisted Living Residence and who receives housing and Resident Services and, when the context requires or permits, such individual's Legal Representative. An individual who resides in an Assisted Living Residence or Special Care Residence for any period of time shall be entitled to all the rights and privileges accorded under 651 CMR 12.00 *et seq.* regardless of the anticipated length of the residency.

Resident Representative. An individual who is authorized by the Resident to help him or her fully participate in planning services or paying fees. The Resident Representative shall not be employed by the Residence, nor affiliated with the Sponsor unless related to the Resident by kinship or marriage. The Resident Representative shall not act on behalf of a Resident in circumstances warranting a Legal Representative. The Residence shall not treat the Resident Representative as personally liable for payment of Resident fees without having first obtained the Resident Representative's written agreement to act as a guarantor or surety.

Resident Services. Services to assist Residents with Activities of Daily Living (ADL), Instrumental Activities of Daily Living (IADL), Self-administered Medication Management (SAMM), or other similar services, but does not include optional services such as concierge services, recreational or leisure services. Resident Services are provided either through physical assistance or staff supervision.

Restraint. For the purposes of these Regulations, any action taken by the Assisted Living Residence for the purpose or punishing or penalizing a Resident, or to control or manage a Resident's behavior with lesser effort by the Assisted Living Residence that is not in the Resident's best interest by means of: (1) manual method or physical or mechanical device, material, or equipment attached or adjacent to the Resident's body that the individual cannot remove easily which restricts the Resident's freedom of movement or normal access to his or her body; or, (2) any drug not required to treat medical symptoms and not requested by the Resident.

Secretary. The Secretary of the Executive Office of Elder Affairs of the Commonwealth of Massachusetts.

Self-administered Medication Management (SAMM). A process which includes reminding Residents to take medication, opening containers for Residents, opening prepackaged medication for Residents, reading the medication label to Residents, and observing Residents while they take the medication.

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Physical Restraint. Any manual method or physical or mechanical device, material, or equipment attached or adjacent to the Resident's body that the individual cannot remove easily which restricts the Resident's freedom of movement or normal access to his or her body. ¶

Service Coordinator. The individual(s) responsible for supporting the coordination of Resident care, including the preparation and periodic review and revision of each Resident's service plan.

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Significant Negative Effect. The consequence of a situation in which a Resident experienced a significant risk of death or serious physical or emotional harm. The consequences of such situations include, but are not limited to, accidental injury, unanticipated death, suicide or suicide attempt, a physical or sexual assault by or against a Resident; a complaint of Resident abuse, suspected Resident abuse, or referral of a complaint of Resident abuse to a local or state authority; a medication error requiring medical attention; SAMM or LMA error with an adverse effect requiring medical attention; elopement with an absence of greater than 30 minutes; misuse of a Resident's funds by the Residence or its staff; an outbreak of a serious communicable disease that is listed in 105 CMR 300.100: Diseases Reportable to Local Boards of Health; pest infestation; food poisoning as defined in 105 CMR 300.020: Diseases Reportable to Local Boards of Health; and, fire or structural damage to the Residence.

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Skilled Nursing Care. Skilled services described in 130 CMR 456.409(A).

Special Care Residence. The Residence in its entirety or a separate and distinct section within the Residence that provides an enhanced level of supports and services for one or more Residents to address their specialized needs due to cognitive or other impairments.

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Special Care Unit. A portion of a Special Care Residence designed for and occupied pursuant to a Residency Agreement by one or two individuals as the private living quarters of such individuals.

Sponsor. The person or legal entity named in the Certification of an Assisted Living Residence.

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Transfer of Ownership. Transfer of a majority interest in the ownership of an Assisted Living Residence. In the case of an individual, transfer of ownership; in the case of a corporation, transfer of a majority of the stock thereof; in the case of a partnership, transfer of a majority of the partnership interest; in the case of a trust, change of the trustee, or majority of trustees shall constitute transfer of ownership. A transfer of ownership shall also be deemed to have occurred where foreclosure proceedings have been instituted and consummated by a mortgagee in possession of the premises, or when bankruptcy proceedings have been initiated.

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Therapeutic Diet. A meal plan prescribed or ordered by the Resident's physician. ¶

Unit. A portion of an Assisted Living Residence designed for and occupied pursuant to a Residency Agreement by one or two individuals as the private living quarters of such individuals.

12.03: Certification

(1) Requirements and Limitations.

(a) No person or legal entity shall advertise, operate, or maintain an Assisted Living Residence until it has been certified by EOEa.

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(b) Notwithstanding the requirement of 651 CMR 12.03(1), prior to the commencement of operations, an Applicant may advertise an uncertified Assisted Living Residence only if it first initiates the application process for Certification by notification to EOEa, and if it clearly

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states in all advertising and marketing materials that it has not completed the EOEA
Certification process.

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- (c) An Applicant must have sufficient property rights, as an owner or lessee, as the Secretary or his or her designee finds necessary for the operation of an Assisted Living Residence.
- (d) An Application for Certification shall not be approved until the Applicant and premises meet the requirements of 651 CMR 12.03(2).

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- (2) Application for Certification. Application shall be made on forms and in the manner prescribed by EOEA. Every Application shall be notarized and signed under the pains and penalties of perjury by the Applicant. Except as set forth in 651 CMR 12.03(8), an Application shall be submitted to EOEA at least 60 days prior to the date the Applicant plans to commence operation of the Assisted Living Residence. EOEA shall charge a non-refundable fee set by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, s. 3B for the filing of the Application for Certification of an Assisted Living Residence. An Applicant shall file a separate Application for each Assisted Living Residence for which Certification is sought. In support of the Application for Certification each Applicant shall provide:

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- (a) The name and address of each officer, director, and trustee; and the names and addresses of each owner, general partner, limited partner, or shareholder with a 25% or greater interest in the Assisted Living Residence;
- (b) Attestation, under the pains and penalties of perjury, that none of such individuals has ever been found in violation of any local, state or federal statute, regulation, ordinance, or other law by reason of that individual's relationship to an Assisted Living Residence or health care facility;
- (c) A list for each such individual of all multi-family housing or health care facilities or providers in which she or he has been or is an officer, director, trustee, or general partner;
- (d) If the Applicant or any person named in the Application as set forth in 651 CMR 12.03(2)(a) has or has had, within the previous five years, an interest in one or more of entities listed below, evidence from the Massachusetts Department of Public Health (DPH) that the entities have substantially met applicable criteria for licensure or Certification and, if applicable, have corrected all cited deficiencies without de-licensure or de-certification being imposed:
 1. hospital, clinic, long term care facility, mammography facility, institutions for unwed mothers, out of hospital dialysis unit, hospice program, bacteriological laboratory, blood bank, or other entity licensed by the DPH under M.G.L. c. 111;
 2. medical provider licensed under other applicable state statutes; including a facility, halfway house or treatment program unit for alcoholism licensed under M.G.L. c. 111B, ambulance service licensed under M.G.L. c. 111C, clinical laboratory licensed under M.G.L. c. 111D, and drug rehabilitation facility licensed under M.G.L. c. 111E; or
 3. home health agency in Massachusetts certified under Title XVIII of the Social Security Act.
- (e) A copy of the conversion approval from the DPH, if an Applicant seeks to convert all or part of a premises licensed as a Long Term Care Facility to an Assisted Living Residence or if an Applicant seeks to add Assisted Living Residences to existing premises licensed as a Long-term Care Facility;
- (f) An operating plan which shall include the following information:

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1. The number of single and double occupancy Units for which Certification is sought, the number of single and double occupancy Units designated as Special Care Units, and the number of Residents per Unit;
 2. The location of Units and Special Care Units, common spaces, and egresses by floor;
 3. The fee structure for lodging, meals and services;
 4. The type and extent of services to be offered, arrangements for providing such services, including third party contracts, and linkages with hospital and nursing facilities;
 5. A Plan for Self-administered Medication Management (SAMM) for Residents, including but not limited to, assistance with as-necessary (PRN) medication when part of the SAMM, and, if offered, Limited Medication Administration;
 6. A means for Residents to communicate urgent or emergency needs, and a plan to provide timely assistance to them;
 7. The number of staff to be employed in the operation of the Assisted Living Residence and their minimum qualifications and responsibilities;
 8. A copy of the Residency Agreement that will be used by the Assisted Living Residence. It must clearly describe the rights and responsibilities of the Resident and Sponsor, and comply with all requirements of M.G.L. c. 19D and 651 CMR 12.00;
 9. A copy of all required current building, fire safety, and locally approved state sanitary code certificates and permits;
 10. Procedures to notify a Resident and his or her Legal or Resident Representative, as appropriate, that the Assisted Living Residence is no longer an appropriate environment for the Resident. Such notice shall describe the changes in the Resident's service needs that justify such a finding, explain when those changes occurred, and describe how the Resident's needs can no longer be satisfied;
 11. A copy of all policies and procedures related to the design and operation of a Special Care Residence required under 651 CMR 12.04(4);
 12. A copy of the quality improvement and assurance program required under 651 CMR 12.04(10);
 13. A copy of the disaster and emergency preparedness plan required under 651 CMR 12.04(11);
 14. A copy of the communicable disease control plan required under 651 CMR 12.04(12);
 15. A copy of the Controlled Substances policies and procedures required by 651 CMR 12.04(14);
 16. A statement citing the beginning and ending dates of the Residence's fiscal year; and
 17. Policies and procedures designed to ensure a safe environment for all Residents.
- (g) Applications for renewal Certification must also include a statement that the data required by 651 CMR 12.04(13), information documenting all substantial changes to the operating plan prior to the effective date, and all other information required by EOEA, have been submitted.

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(3) Review of Applications. The EOEA shall not review an Application for Certification unless:

- (a) The Application includes all information required by EOEA;
- (b) The Application includes all required attachments and statements that are required for the Certification; and
- (c) The Applicant has paid all required Application fees.

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(4) Evaluation of Application. The EOEA shall not approve an Application for Certification unless:

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(a) The Secretary or his or her designee has conducted a compliance review of the Assisted Living Residence as set forth in 651 CMR 12.09 and has reasonably determined that the premises meets the requirements of M.G.L. c. 19D and is in compliance with 651 CMR 12.00 *et seq.*; and

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(b) The Secretary or his or her designee has conducted a review of the Applicant and has reasonably determined that the Applicant meets the requirements of M.G.L. c. 19D, and is in compliance with 651 CMR 12.00 *et seq.*

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(c) EOEa may, in its discretion, deny Certification to any Applicant who has directly or indirectly had an ownership interest in an entity licensed under M.G.L. c. 111, or a medical provider licensed under other applicable state statutes, or a home health agency certified under Title XVIII of the Social Security Act, that:

1. has been the subject of a patient care receivership action;

2. has ceased to operate such an entity as a result of:

a. a settlement agreement arising from a decertification action;

b. a settlement agreement in lieu of a patient care receivership; or

c. a delicensure action or involuntary termination of participation in either the Medical Assistance program or the Medicare program;

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3. has been the subject of a substantiated case of patient abuse or neglect involving material failure to provide adequate protection or services for a resident in order to prevent such abuse or neglect; or

4. has over the course of its operation been cited for repeated, serious or willful violations of rules and regulations governing the operation of said health care facility that indicate a disregard for resident safety and an inability to responsibly operate an Assisted Living Residence.

(5) Deemed Certification Pending Approval By EOEa. A Sponsor of an Assisted Living Residence which, on or before July 1, 1995 has commenced construction or operation, or has received official action approval for taxable or tax exempt financing by a governmental issuer, or has received a site approval and market acceptance letter for a loan insured by the Federal Housing Administration, shall, in order to commence or continue operations, file an initial Application with EOEa for each such Assisted Living Residence in accordance with 651 CMR 12.03(2) on a form provided by EOEa. For the purposes of 651 CMR 12.03(5), "commencement of operations" means the Assisted Living Residence is open and providing lodging, meals and services to Residents under a Residency Agreement.

If the completed Application is date stamped by EOEa within 30 days after July 1, 1995 with full payment of the Application fee, the Applicant shall be deemed to be certified to operate and maintain an Assisted Living Residence from January 13, 1995 or from a date thereafter up to July 1, 1995. The Assisted Living Residence shall be Certified until such time as EOEa issues notice to the Applicant regarding the approval or denial of its Application.

The Applicant and Assisted Living Residence shall be subject to completion of all Application and review procedures and must comply with, and shall be subject to, all requirements of St. 1994, c. 354 and 651 CMR 12.00 in order to retain Certification.

(6) Certification Fee. Upon receiving notice of Certification, a Sponsor shall forward within ten days to EOEa a Certification fee, set by the Secretary for Administration and Finance pursuant to M.G.L. c. 7, s. 3B based on the number of Units certified on the date of its most recent Application. In the

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event that the Applicant or Sponsor of an Assisted Living Residence alters the Residence by the addition or removal of Units, a fee adjustment may be made by EOEa. Failure to pay the fee within the ten day period shall result in a finding of non-compliance by EOEa under 651 CMR 12.09. No fee for initial certification or certification renewal shall be due from any Assisted Living Residence created under the HUD Assisted Living Conversion Program.

- (7) Renewal Certification Procedures. EOEa shall renew for a term of two years the Certification of a Sponsor of an Assisted Living Residence if EOEa determines that the Sponsor and the Assisted Living Residence meet the requirements of St. 1994, c. 354 and 651 CMR 12.00.

If the Application for renewal of Certification is filed and date-stamped at EOEa at least 30 days before the stated expiration date of the Certification, the Certification shall not expire on such date. The Sponsor and Assisted Living Residence shall be deemed to be certified unless EOEa notifies the Sponsor that the Application for renewal has been denied.

The Application shall be filed on a form provided by EOEa, include an Application fee as set by the Secretary for Administration and Finance and follow the procedures set forth in 651 CMR 12.03.

For the purposes of those Assisted Living Residences deemed certified under 651 CMR 12.03(5), the running of the biennial period for renewal of Certification shall begin on the date of issuance of Certification by EOEa.

- (8) Change of Ownership. Any person or entity who intends to acquire a 25% or greater interest in an existing Assisted Living Residence shall submit an Application for Certification to EOEa at least 30 days prior to the transfer of the ownership interest. The application for Certification shall also include a statement on a form developed by EOEa, signed and notarized by the parties, regarding the anticipated transfer of ownership of the Residence. If EOEa receives these documents at least 30 days prior to the closing date of the change of ownership, the new Applicant shall be considered to be deemed certified from and after the date of the change of ownership, until such time as EOEa approves or denies the Applicant's application for Certification; provided that after the transfer of ownership has been completed, the new Applicant has within five days submitted a signed and notarized statement that the transfer of ownership has been completed. The previous Sponsor shall return its Assisted Living Certificate to EOEa within five days after the transfer of ownership. The current Certification of the Residence shall be deemed valid until the completion of a Certification process for changes sought. In the event of a transfer of ownership interest of an Assisted Living Residence, it is within the Secretary's discretion to conduct a full or partial compliance review.

- (9) Non-transferability of Certification.

- (a) Each Certification shall be valid only in the possession of the Residence and the Sponsor to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary;
- (b) No Certification shall be valid for any building premises other than those for which the Certification was originally issued;
- (c) Every Assisted Living Residence Certification must be displayed in a conspicuous place in the Residence; and
- (d) The Certification of a Sponsor to operate an Assisted Living Residence shall be returned by registered mail to EOEa immediately upon:
 1. Revocation of or refusal to renew the Certification;
 2. Transfer of ownership;

3. Change of name of the Sponsor; or
4. Closure or other termination of the Residence's operations.

(10) Closure. In the event a Sponsor of an Assisted Living Residence elects to permanently close or sell the Residence for any reason, compliance with the following notification procedures is required:

- (a) Resident Notice. A written notice must be received by the Residents, their Legal Representatives, and their Resident Representatives (if applicable), at least 90 days prior to the date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence. At a minimum, such notice shall include:
 1. The date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence;
 2. A description of the actions the Sponsor will take to assist the Residents in securing comparable housing, if necessary; and
 3. A reference to the rights of the Residents that may be exercised under the landlord/tenant laws established under M.G.L. c. 186 or M.G.L. c. 239.
- (b) EOEA Notice. A written notice must be received by EOEA at least 90 days prior to the date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence. Such notice shall include a copy of the Resident notice in accordance with 651 CMR 12.03(10)(a), proof of notification of all affected Residents and their Legal Representatives and Resident Representatives (as applicable), and the identification of all Residents receiving additional services, including but not limited to, Group Adult Foster Care.

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(11) Suspension of Certification. If EOEA suspends the Certification of an Assisted Living Residence, the Sponsor shall display the notice of suspension in a prominent place in the Residence, in place of the Certification, so long as the suspension is in effect.

12.04: General Requirements for an Assisted Living Residence

An Assisted Living Residence shall meet the following requirements to obtain and maintain Certification:

(1) Physical Requirements.

- (a) An Assisted Living Residence shall provide only single or double Units with lockable doors on the entry door of each Unit. Residents shall have exclusive rights to their Units with lockable doors at the entrance of their individual or shared Units, however, as part of a Resident's Service Plan, keys or access codes may be readily available to specified shift staff;
- (b) All Newly Constructed Assisted Living Residences shall provide a private bathroom for each Unit which shall be equipped with one lavatory, one toilet, and one bathtub or shower stall;
- (c) All other Assisted Living Residences shall provide at a minimum, a private half-bathroom (i.e., equipped with one washstand and one toilet) for each living Unit and shall provide at least one Bathing Facility for every three Residents;
- (d) All Assisted Living Residences shall provide at a minimum, either a kitchenette or access to a refrigerator, sink, and heating element for all Residents, however, as part of a Resident's Service Plan, such access may be limited to supervised access; and

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- (e) Every Assisted Living Residence shall meet the requirements, of all applicable federal and state laws and regulations including, but not limited to, the state sanitary codes, state building and fire safety codes and laws and regulations governing use and access by persons with disabilities.

(2) Service and Service Coordination Requirements.

- (a) Each Assisted Living Residence shall designate at least one Service Coordinator. The Service Coordinator shall be qualified by training and experience and shall be responsible for the following:
1. Reviewing with the Resident the assessment and service options available to address needs and preferences identified under 651 CMR 12.04(6) and 651 CMR 12.04(7);
 2. Implementation of the service plan developed under 651 CMR 12.04(7);
 3. Monitoring the Resident's needs and the services provided by the Residence to address those needs;
 4. Coordinating with and participating in the Quality Improvement and Assurance program, as set forth under 651 CMR 12.04(10); and
 5. Maintaining complete and accurate records of service plans.
- (b) The Sponsor of the Assisted Living Residence shall provide or arrange for the provision of the following services by personnel meeting standards for professional qualifications and training set forth in 651 CMR 12.05, 12.07, and 12.08:
1. For all Residents whose service plans so specify, supervision of and assistance with Activities of Daily Living, including at a minimum bathing, dressing, and ambulation and similar tasks; and supervision or assistance with Instrumental Activities of Daily Living including at a minimum laundry, housekeeping, socialization and similar tasks;
 2. Self-administered Medication Management (SAMM) of prescription or over-the-counter medication, if specified by a Resident's service plan. When assisting a Resident to self-administer medication the individual performing SAMM must:
 - a. remind the Resident to take the medication;
 - b. check the package to ensure that the name on the package is that of the Resident;
 - c. observe the Resident take the medication; and
 - d. document in writing the observation of the Resident's actions regarding the medication (e.g., whether the Resident took or refused the medication, the date and time).

If requested by the Resident, the individual performing SAMM may open prepackaged medication or open containers, read the name of the medication and the directions on the label to the Resident, and respond to any questions the Resident may have regarding those directions.

The Residence may assist a Resident with SAMM from a medication container that has been removed from its original pharmacy-labeled packaging or container by another person (e.g., by the Resident's family). Such assistance is not required of the Residence. If this service is to be provided, the Residence and Resident shall have a full written disclosure of the risks involved and consent by the Resident.

SAMM shall only be performed by an individual who has completed Personal Care Service Training as set forth in 651 CMR 12.07(4) or (8); a practitioner, as defined

Deleted: Waiver Requests. The Secretary may waive the requirements relative to bathrooms and the Bathing Facilities for Certification of Assisted Living Residence premises set forth in 651 CMR 12.04(1) if he or she determines that:

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in M.G.L. c. 94C; or a nurse registered or licensed under the provisions of M.G.L. c. 112, s. 74 or s. 74A to the extent allowed by laws, regulations and standards governing nursing practice in Massachusetts. Central storage of Residents' medications in an area outside of a Resident's Unit is prohibited. Residences shall provide a refrigerator to store medication in the Resident's Unit if refrigeration is required, and may employ a locked location in which to safely store medications within a Unit.

3. Timely assistance to Residents and prompt response to urgent or emergency needs:

- a. By the presence of 24 hour per day on-site staff;
- b. By the provision of personal emergency response systems for each Resident if the service plan requires or other means for the purpose of signaling such staff; and
- c. Any additional response systems EOEa may require in accordance with the service needs of the Residents.

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4. Up to three regularly scheduled meals daily (minimum of one meal per day). All Assisted Living Residences shall use daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences set forth in the Title III of the Older Americans Act as amended (42 USC 3030g) as a minimum dietary standard. In addition to the foregoing, at a minimum an Assisted Living Residence shall provide or arrange for the availability of food selections that would permit a Resident to adhere to a diet consistent with the most recent edition of Dietary Guidelines for Americans and dietary plans that do not require complex calculations of nutrients or preparation of special food items. These dietary plans shall include sodium restricted, sugar restricted and low fat. The Residence shall have a qualified dietitian review the Residence's dietary plans at least every six months.

(3) Skilled Care Services.

- (a) The Sponsor may arrange for the provision of ancillary health services in the Residence. The Sponsor may not use Assisted Living Residence staff for these services unless said staff is functioning as an employee of a Certified Provider of Ancillary Health Services or as an employee of a licensed hospice;
- (b) No Assisted Living Residence shall provide, admit or retain any Resident in need of Skilled Nursing Care unless:
 - 1. The Skilled Nursing Care will be provided by a Certified Provider of Ancillary Health Services or by a licensed hospice; and
 - 2. The Certified Provider of Ancillary Health Services does not train the Assisted Living Residence staff to provide the Skilled Nursing Care.
- (c) Nursing services provided by a Certified Provider of Ancillary Health Services such as injection of insulin or other drugs used routinely for maintenance therapy of a disease may be provided to Residents.
- (d) Neither nurses employed by Residences nor nurses contracted by Residences shall direct any non-licensed staff to perform Skilled Nursing Care or to administer any medications to Residents, nor oversee nor supervise such practice.

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(4) Special Care. Any Residence that chooses to advertise, market, otherwise promote or provide special care for Residents shall administer such care and services in accordance with the requirements of 651 CMR 12.04(4) in addition to all other requirements of 651 CMR 12.00 *et seq.* A Residence may

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not operate a Special Care Residence without submitting an operating plan to EOEa that explains how the Special Care Residence will meet the specialized needs of its resident population, including those who may need assistance in directing their own care due to cognitive or other impairments. This includes a description of the physical design of the structure and the units, physical environment, specialized safety features, enrichment activities, and trained staff.

(a) All Special Care Residences shall be administered in accordance with the following safeguards:

1. Entry and exit doors in the common use areas within Special Care Residences shall be secured in accordance with local, state and federal laws and regulations. All doors must automatically unlock in the case of fire, power outage or emergency situation;
2. Staff shall be trained and assigned according to the requirements of 651 CMR 12.06 and 12.07;
3. The Residence shall develop and implement a 24-hour preparedness plan by assessing the needs of each occupant of the, Special Care Residence for emergency assistance, and devise an appropriate method to provide the necessary assistance;
4. The Residence shall develop and implement policies and procedures to assess and reduce the risk of potential hazards in the physical environment related to the special characteristics of the population. Such policies and procedures must include an annual written statement describing in detail how the physical characteristics of the Special Care Residence have been or will be modified to promote the safety of its Residents;
5. The Residence shall develop policies and procedures for the Special Care Residence that address unsafe Resident behaviors such as wandering, and verbally or physically aggressive behavior including coercive or inappropriate sexual behavior;
6. The Residence shall develop policies and procedures governing the transition of Residents moving in or out of the Special Care Residence;
7. The Residence shall provide a multipurpose activity space; and,
8. All Special Care Residences that commence an initial certification process after October 1, 2015 shall provide a secure outdoor space.

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(b) The Special Care Residence shall prepare a planned activity program that includes structured activities with designated staff a minimum of three times within a 24-hour period, seven days per week. The planned activity program shall address Resident needs in the following areas of Resident function, as applicable:

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1. Gross motor activities;
2. Self-care activities;
3. Social activities; and
4. Sensory and memory enhancement activities.

(c) The Residence shall document and make available upon request all plans, policies and procedures required under 651 CMR 12.04(4)(a) and (b) in accordance with the disclosure requirements of 651 CMR 12.08(3).

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(d) Administrative staff of the Residence qualified by training and experience shall review the operations of the Special Care Residence twice each year. The reviews may be conducted as part of the Residence Quality Improvement and Assurance program prescribed under 651 MR 12.04(10). The Residence shall document the results of these reviews.

(5) Optional Services. The Assisted Living Residence may provide or arrange for the provision of the following optional services, including but not limited to:

- (a) Local transportation (medical & recreational);
- (b) Barber or beauty services, sundries for personal consumption and other amenities;
- (c) Money management and other financial arrangements to be performed by an independent party for any Resident unable to manage his or her funds or property. The Sponsor shall not allow any personnel of an Assisted Living Residence to control or manage the funds or property of a Resident; provided that the Sponsor may, at the request of the Resident or their Legal Representative, hold and disburse Resident funds, not to exceed \$200, for personal use of the Resident not otherwise covered by the Residency Agreement. The Sponsor shall detail such agreements in the Resident's service plan; and
- (d) Limited Medication Administration (LMA). LMA may only be provided by a family member; a practitioner, as defined in M.G.L. c. 94C; or a nurse registered or licensed under the provisions of M.G.L. c. 112, s. 74 or 74A. The Residence must perform LMA from an original, pharmacy-filled and pharmacy-labeled container.

In addition to the requirements and limitations set forth in 651 CMR 12.04(3), a nurse with a valid Massachusetts nursing license employed by the Assisted Living Residence may administer non-injectable medications, prescribed or ordered by an authorized prescriber, by oral or other methods (e.g. topical, inhalers, eye and ear drops, medicated patches, as necessary oxygen, suppositories). LMA performed by a nurse must be completed in accordance with all applicable laws, regulations and standards governing the medication administration process by a nurse, including documentation requirements.

In accordance with the standards of nursing practice, a nurse may only administer medication from an original, pharmacy-filled and pharmacy-labeled container. All medication must be kept in the Resident's Unit and stored in such a manner that the nurse can adequately verify the integrity of the medication.

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(6) Screening and Assessment.

- (a) Prior to a Resident moving in, a nurse shall conduct an initial screening to assess and determine:
 - 1. The prospective Resident's service needs and preferences and the ability of the Residence to meet those needs;
 - 2. The Resident's functional abilities based on his or her cognitive status;
 - 3. Whether SAMM is appropriate for the Resident based on the following:
 - a. The completion of an observational assessment by a nurse to determine whether the resident is capable of performing the particular method(s) of independent medication administration; and
 - b. A written statement by that nurse documenting the Resident's capability of performing the particular method(s) of independent medication administration;
 - 4. Whether the Resident is at risk for elopement; and
 - 5. Whether the Resident is suitable for a Special Care Residence.
- (b) The preadmission assessment shall note the name of any Legal Representative or any other person who has been documented as having decision-making authority for the Resident and the scope of his or her authority.
- (c) The initial screening findings shall be documented and disclosed to the Resident, his or her Legal Representative and Resident Representative, if any, before the Resident moves into the Residence.

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- (7) Service Plan Development. The Service Coordinator or nurse shall develop an individualized Service Plan for each Resident in accordance with the findings of the initial screening described in 651 CMR 12.04(6). Said service plan shall be developed before the Resident moves into the Residence and be based on information provided by the Resident, his or her Legal Representative or Resident Representative. The Residence shall ensure the Resident's participation in the development of the service plan to the maximum extent possible and shall include the Legal Representative or Resident Representative to the extent that he or she is authorized, willing and able to be involved. The service plan shall include an evaluation, conducted within the past three months by the Resident's physician or authorized practitioner, of the prospective Resident's physical, cognitive, and psychosocial condition. It is the responsibility of the Resident or his or her representative to have the physician's or authorized practitioner's evaluation completed. In addition;

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The Residence shall involve the prospective Resident, the Legal Representative, and the Resident Representative to the maximum extent possible.

- (a) The Residence shall, at a minimum, document its assessment findings for the Resident on the following:
1. Allergies;
 2. Diagnoses;
 3. Medications (including dosage, method of administration and frequency);
 4. Dietary needs;
 5. Need for assistance in emergency situations;
 6. History of psychosocial issues including the presence of disruptive behaviors, or behaviors which may present a risk to the health and safety of the Resident or others;
 7. Level of personal care needs, including ability to perform ADLs and IADLs; and
 8. Ability of the Resident to manage medication, including the ability to take medication on an as-needed basis.
- (b) The Service Coordinator or nurse shall review the Resident's initial service plan within 30 days of the commencement of residency and document the review to ensure the Resident's needs and preferences are accurately incorporated therein and that the Residence is capable of meeting the Resident's needs in accordance with 651 CMR 12.00.

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Deleted: The Assisted Living Residence shall, with each Resident, develop and maintain an individualized service plan.

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(8) Service Plan Requirements.

- (a) Each service plan shall be based on a current assessment of the Resident, and indicate the following:
1. The services needed, including the minimum service package provided for a monthly fee and any additional services the Resident needs;
 2. The Resident's goals, and the frequency and duration of all services provided to address the Resident's particular physical, cognitive, psychological and social needs, including but not limited to the following:
 - a. Details of the manner in which the Residence shall provide for the presence of a 24 hour per day, on site staff, and the manner in which the Residence shall provide for personal emergency response devices or procedures;
 - b. Details of the types of assistance with medications that the Residence shall provide, if any;
 - c. Description of services that will be provided by a person or entity not affiliated with the Assisted Living Residence or by a certified provider of ancillary health services (e.g. VNA services, private duty aides, adult day care) if the Resident, Resident Representative, or Legal Representative notifies the Assisted Living Residence that he or she has arranged for such services; and

d. The need for a meal plan prescribed or ordered by a Resident's physician. The Residence shall have a qualified dietitian review the Resident's dietary needs, and provide the Resident with diet management counseling; and

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3. The service plans for Residents residing in Special Care Units must indicate the enrichment activities provided to them as set forth in 651 CMR 12.04(4).

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(b) All service plans shall be in writing, signed and dated by the Resident or his or her Legal Representative, and by the Sponsor or his or her representative.

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(c) Following the Service Plan reassessment required by 651 CMR 12.04(7)(b), the Service Coordinator or nurse shall review the Service Plan not less than every six months, or at any time upon identifying a significant change in the Resident's condition, and document the review to ensure the Resident's needs and preferences are accurately incorporated therein and that the Residence is capable of meeting the Resident's needs in accordance with 651 CMR 12.00.

The service plan shall be confidential except to the extent necessary to provide services and manage the operations of the Assisted Living Residence; provided that EOEa may review the service plan at any time with the consent of the Resident or his or her Legal Representative.

Deleted: Each service plan shall be reviewed at least once every six months to assess achievement of the Resident's goals, and to determine if the services, remain appropriate to the Resident's needs and the ability of the Residence to meet those needs. The Residence may conduct this review in conjunction with the reassessment that is required under 651 CMR 12.04(7)(d). The Residence shall document this review.

(9) Ombudsman Requirements. The Applicant or Sponsor of an Assisted Living Residence is required to assist the Assisted Living Ombudsman Program in its duties as a condition of maintaining Certification. See 651 CMR 13.00, *et seq.*

(10) Quality Improvement and Assurance Program. The Residence shall establish an effective, ongoing quality improvement and assurance program to evaluate its operations and services to continuously improve services and operations, and to assure Resident health, safety, and welfare. The program should encompass oversight and monitoring of Residence services, ongoing quality improvement, and implementation of any plan that addresses improved quality of services. The Residence shall periodically gather, annually review and analyze data to evaluate its provision of services to its residents, the overall outcome of services and planning, and Resident satisfaction. The program must be based on analysis of relevant information focusing on Resident safety, well-being and satisfaction. The program shall include but not be limited to review and assessment of the following operations:

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(a) Service Planning. The Residence shall review a random sample of Resident assessments, service plans and progress notes at least once each year to ensure that the Residents' service plans have been implemented and are effective.

(b) Resident Safety Assurances. The Residence shall review policies and procedures designed to ensure a safe environment for all residents; and

(c) Medication Quality Plan. The Residence shall develop and implement systems that support and promote safe SAMM, and if applicable, LMA programs. The Medication quality plan shall include but need not be limited to the following components:

1. Semiannual evaluation- of each Personal Care worker that examines his or her awareness of SAMM regulations and applicable policies, and verifies his or her demonstrated ability to comply with SAMM regulations and related Residence policies and procedures; and

2. A quarterly audit of a random sample of the Residence medication documentation sheets required under 651 CMR 12.04(2)(b)2. to ensure compliance with SAMM protocols and Residence policies.

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- (d) A system shall be in place to facilitate the detection of issues and problems, to expedite the implementation of action, to resolve problems and communicate outcomes of actions taken or refused. Information solicited from Residents should be collected in a manner which offers anonymity (e.g., suggestion box, resident satisfaction surveys, etc.).
- (e) Data analysis shall be used to identify and implement changes that will improve performance or reduce the risk of Resident harm. The Residence shall maintain documentation that shows it has collected and analyzed data; that appropriate actions were implemented to address identified issues and resolve problems; and shall note any follow-up actions that were recommended, planned and taken or not taken.
- (f) The result of the quality improvement program cannot be the sole basis for a determination of non-compliance pursuant to 651 CMR 12.09.

(11) Disaster and Emergency Preparedness Plan. Each Residence shall have a comprehensive emergency management plan to meet potential disasters and emergencies, including fire; flood; severe' weather; loss of heat, electricity, or water services; and resident-specific crises, such as a missing resident. The plan shall be designed to reasonable ensure the continuity of operations of the Residence.

(a) Plan Requirements.

1. The plan and any changes to the plan, which shall be developed in conjunction with local and state emergency planners, must include the following elements:
 - a. an evacuation strategy for both immediate evacuations, for such events as fires or gas leaks, as well as delayed evacuations, for such events as impending severe weather;
 - b. an established Mutual Aid plan that addresses essential issues, such as supplies, staff, and beds;
 - c. actions necessary to ensure supply, equipment and pharmaceutical support in the event such services are interrupted;
 - d. an established relationship with local public safety officials and with local Emergency Management Services (EMS) officials;
 - e. participation in Health and Homeland Alert Network (HHAN);
 - f. and protocols for full participation in the Silver Alert System.
2. The plan shall indicate the location of emergency exits; evacuation procedures; and the telephone numbers of police, fire, ambulance, and emergency medical transport to be contacted in an emergency;
3. The plan shall address the physical and cognitive needs of residents, and shall include special staff response, including the procedures needed to ensure the safety of any resident. The plan shall include provisions related to individuals residing in a Special Care Residence, and shall be amended or revised whenever any resident with unusual needs is admitted;
4. The plan shall provide for the conducting of annual simulated evacuation drills and rehearsals for all shifts;
5. The Residence shall provide every Resident with a copy of the instructions they will be given under the Disaster and Emergency Preparedness Plan, and shall have available for their review a copy of the Plan.

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- (b) Staff Training. The Residence shall ensure disaster and emergency preparedness by orienting new employees at the time of employment to the Residence's emergency preparedness plan, periodically reviewing the plan with employees, and making certain that all personnel are trained to perform the tasks assigned to them.
- (c) Reporting Emergency Situations. Upon the occurrence of any emergency situation that displaces Residents from their Units for eight hours or more, the manager of the Residence or his or her designee must immediately provide a report to the EOEA Assisted Living Residence Certification Unit. This report shall include, at a minimum:
1. the name and location of the Residence;
 2. the nature of the problem;
 3. the number of Residents displaced;
 4. the number of Units rendered unusable due to the occurrence, and the anticipated length of time before the Residents may return to them;
 5. remedial action taken by the Residence; and
 6. other State or local agencies notified about the problem.
- (d) Reporting Resident-specific Emergencies. A Residence shall report to EOEA the occurrence of an incident or accident that arises within a Residence or its property, that has or may have a Significant Negative Effect on a resident's health, safety or welfare, as defined by 651 CMR 12.02. A Significant Negative Effect shall be assumed whenever, as a result of an incident or accident, any unplanned or unscheduled visit to a hospital or medical treatment is necessary.
- (e) Any report required under either section 12.04(11)(c) or 12.04(11)(d) shall be filed with the Assisted Living Certification Unit within 24 hours after the occurrence of the incident or accident via EOEA's online filing system. In the event the online filing system is inaccessible, a Residence must submit a temporary report by facsimile and telephone and formally submit the official report via the online filing system as soon as the service becomes accessible. The information submitted in the incident report must be accurate and include all details associated with the incident. This requirement is in addition to the requirements of M.G.L. c. 19A, s. 15, and of any other applicable law.
- (12) Communicable Disease Control Plan. The Residence must implement a plan to prevent and limit the spread of communicable disease. The plan shall conform to the currently accepted standards for principles of universal precautions based on OSHA Guidelines and shall include but need not be limited to the following components:
- (a) A system to effectively identify and manage communicable diseases;
 - (b) Reasonable restrictions on staff contact with Residents when a staff member has a communicable disease in the infectious stage;
 - (c) Organized arrangements to provide the necessary supplies, equipment and protective clothing, consistent with universal precautions under OSHA Guidelines.
- (13) Reports to EOEA.
- (a) Annual Reports.
1. A Sponsor shall file annually, within 90 days following the end of an Assisted Living Residence's fiscal year, a financial disclosure form prescribed by EOEA which sets forth a statement by the Sponsor based on reviewed or audited financial statements prepared by a certified public accountant. All financial statements must be sufficient to permit EOEA to assess the Residence's fiscal condition and ability to meet the

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requirements of the service plans established for its Residents is adequate. Upon written request to EOE, the Secretary may extend such 90-day period by an additional period, not to exceed 30 days.

2. Each Residence shall file annually, on a form approved by EOE, a report of aggregate information regarding Residents which is based, where applicable, on the most recent Resident assessments and service plans. The reporting period shall be January 1st through December 31st, and the report shall be submitted to EOE no later than March 1st of the next year. Failure to timely submit each annual report will result in a finding of non-compliance at the next Certification review. The report shall indicate:

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a. As of December 31st:

- i. The number of current Residents, their ages, and gender;
- ii. The percentage of all current Residents with a medical diagnosis of Alzheimer's disease or related dementia;
- iii. Number of Residents currently residing in a Special Care Residence;
- iv. Percentage of residents currently receiving SAMM, LMA or both SAMM and LMA;
- v. The average and numerical range of ADLs with which current Residents receive assistance, and,
- vi. For any Residence that participates in the MassHealth Group Adult Foster Care (GAFC) program, the percentage of Residents enrolled in GAFC, in the SSI-G living arrangement, or receiving a Section 8 housing subsidy.

b. For the entire reporting period:

- i. The average Resident census for the reporting period;
- ii. The total number of Resident tenancies concluded during the reporting period, categorized by the reason for termination (e.g., death, greater care needs, moved to another Residence; and
- iii. The average length of stay for all Resident tenancies concluded during the reporting period.

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3. Additional information that EOE may require, on written notice to all certified Assisted Living Residences.

(b) Additional Reporting Requirements.

1. All information required by 651 CMR 12.03(2) or otherwise required by the Secretary shall be kept current by each Applicant or Sponsor. The Sponsor must notify the Secretary in writing at least 30 days prior to any Alteration of the Residence, its Units, or its operating plan. Such notice shall identify the specific changes made to any document which would amend, supplement, update or otherwise alter the operating plan, original Application or renewal for Certification shall be filed with EOE at least 30 days prior to its effective date. In addition to the requirements of 651 CMR 12.04(11)(c), the Sponsor shall forward to EOE a copy of any report or citation of a violation of applicable provisions of the State Sanitary Code, State Building Code, fire safety regulations or other regulations affecting the health, safety, or welfare of Residents within seven days of receipt of notice of such violation.
2. Within 30 days after a new Assisted Living Residence Manager begins employment, the Residence shall forward his or her contact information, including telephone number(s) and email address, to EOE.

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- (14) Controlled Substances. Each Residence shall create policies and procedures intended to prevent the theft or diversion of controlled substances prescribed to Residents who participate in SAMM or LMA. Such procedures shall include:
- a reporting process by which any such incidents of theft or diversion are reported, documented and investigated; and,
 - safeguards for the storage and disposal of all controlled substances that have been prescribed for Residents participating in SAMM and LMA.
- (15) Distribution of Information on Palliative Care and End-of Life Options.
- A Residence shall distribute culturally and linguistically suitable information regarding the availability of palliative care and end-of-life options to all Residents who have provided information indicating that their attending health care practitioner has:
 - diagnosed the Resident with a terminal illness or condition which can reasonably be expected to cause the Resident's death within six months, whether or not treatment is provided; or,
 - determined that the Resident may benefit from hospice or palliative care services.
 - This obligation shall be fulfilled by providing the Resident with:
 - information made available to the Residence by EOEA regarding the availability of palliative care and end-of-life options; or,
 - information produced by the Residence that satisfies the requirements established by M.G.L. c. 111, §227.
 - Each Residence shall provide information to all physicians and nurse practitioners providing care within or on behalf of the Residence regarding the requirement of M.G.L. c. 111, §227(c) that they offer to provide end-of-life counseling to Residents meeting the criteria established by 651 CMR 12.04(15)(a).
 - Each Residence shall make available to EOEA proof that it is in compliance with 651 CMR 12.04(15)(a), (b) and (c) upon request, or at the time of compliance review.
- (16) Exemptions.
- At his or her discretion, the Secretary may grant an exemption from the requirements set forth in 651 CMR 12.04(1)(b), 651 CMR 12.04(1)(c), and/or 651 CMR 12.04(4)(a)(8) if it is determined that:
 - Public necessity and convenience requires such an exemption;
 - The granting of such an exemption shall prevent undue economic hardship; and,
 - The Assisted Living Residence otherwise meets the purposes of assisted living to provide a home-like residential environment.

The Applicant/Sponsor shall request such an exemption in writing and shall enclose supporting documentation. The Secretary may grant such an exemption at his or her discretion.
 - Exemption requests must be filed prior to the commencement of construction or renovation of the Residence. Any exemption request filed after construction or renovation has commenced will be deemed presumptively untimely unless the Applicant or Sponsor can demonstrate that there were specific and exigent circumstances that prevented the filing of the exemption request prior to commencement of construction or renovation of the residence.

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12.05: Record Requirements

All records created or maintained by the Assisted Living Residence shall be legible, recorded in ink, and contemporaneously signed and dated to indicate the name and position of the individual who makes the record entry. Computerized records systems which meet the equivalent requirements in 651 CMR 12.05 for permanency and accessibility, and which provide an auditable record of entries may be used as an alternative or supplement.

- (1) Resident Record. The Assisted Living Residence shall develop and maintain written Resident records which shall remain confidential but for the limited exception of EOE's enforcement of these regulations. The Resident Record and related documents are considered permanent and shall be maintained for the duration of the Resident's stay in the Assisted Living Residence and for at least six years after the date of termination of the Agreement. The Resident record shall include at a minimum, the following:

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- (a) Resident assessment, documented in accordance with the requirements set forth at 651 CMR 12.04(6)(b);

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- (b) Service plans documented in accordance with the requirements of 651 CMR 12.04(8);

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- (c) Progress notes, which shall document significant occurrences, either observed by or reported to Residence staff, including significant or continued changes in the Resident's behavior or memory; incidents involving injury, trauma, illness, or abuse or neglect of the Resident, including but not limited to the recording of incidents in which a resident has been the victim of an assault by another Resident or the perpetrator of an assault on another resident, regardless of whether such a report would be required by law; alleged or actual violations of the Resident's rights as defined in 651 CMR 12.08; and changes in the Resident's service plan;

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- (d) Documentation of Introductory Visits set forth at 651 CMR 12.07(6);

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- (e) Documentation of Self-administered Medication Management, including the SAMM assessment required by 651 CMR 12.04(6)(a)(3);

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- (f) Documentation of all aspects of Limited Medication Administration, if applicable. This includes, but is not limited to, a proper written medication order from an authorized prescriber, documentation of the name, dose, route of administration, and time the medication is administered. The nurse who administers the medication shall sign or initial the documentation;

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- (g) The following documents are also part of the Resident record, and may be kept in a separate location(s):

1. Any applicable guardianship orders, authorized powers of attorney, health care proxies, living wills, and other relevant documents affecting or directing Resident care (including Department of Public Health Comfort Care/"Do Not Resuscitate Order Verification Form," provided that their existence and location is conspicuously documented in the Resident's record and they are immediately available in case of an emergency;
2. The original Residency Agreement and any documents which extend or amend the Residency Agreement; and,
3. The Disclosure of Rights and Services required by 651 CMR 12.08(3).

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- (2) In addition to the individual record requirements above, each Residence that exists within a setting which does not consist exclusively of Assisted Living Units, shall maintain a current census document, updated at least weekly, listing the name of each Resident residing in each occupied certified unit. Each census document shall be kept for a minimum of two years.

- (3) Personnel Record Requirements. The Assisted Living Residence shall develop and maintain written personnel records, and maintain copies of its personnel policies and procedures. Each personnel record shall include at a minimum the following:
- (a) Job description;
 - (b) Educational preparation and work experience;
 - (c) A copy of any current licensure or Certification or, if applicable, documentation of completion of 54-hour Personal Care Services Training set forth in 651 CMR 12.07(4);
 - (d) Documentation of attendance at Personnel Orientation as set forth in 651 CMR 12.07;
 - (e) Documentation of reports of criminal offender record information;
 - (f) Documentation of annual performance evaluation;
 - (g) Documentation of attendance at in-service training; and
 - (h) Copies of any disciplinary letters or reports.
- (4) The Residence must maintain a staff correspondence log for each 24 hour period that communicates information necessary to maintain the continuity of care for all Residents. The correspondence log must be maintained for no less than 90 days.

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12.06:Staffing Requirements

- (1) Qualifications for the Manager. The Manager of an Assisted Living Residence shall be at least 21 years of age and must have demonstrated experience in administration, and demonstrated supervisory and management skills. The Manager must also have a Bachelor's degree or equivalent experience in human services management, housing management or nursing home management. The Manager must be of good moral character, and must never have been convicted of a felony.
- (2) Qualifications for the Service Coordinator. The Service Coordinator of an Assisted Living Residence must have a minimum of two years' experience working with elders or persons with disabilities. The Service Coordinator shall be qualified by experience and training to develop, maintain and implement or arrange for the implementation of individualized service plans. The Service Coordinator must also have a Bachelor's degree or equivalent experience, and knowledge of aging and disability issues.
- (3) General Staffing Requirements. All staff shall possess appropriate qualifications to perform the job functions assigned to them. No person working in a Residence shall have ever been found in violation of any local, state or federal statute, regulation, ordinance, or other law reasonably related to the safety and well-being of a Resident or patient at an Assisted Living Residence or health care facility.
- (4) Staffing Levels.
- (a) Each Residence must develop and implement a process for determining its staffing levels. The plan must include an assessment, to be conducted at least quarterly but more frequently if the Residence so chooses, of the appropriateness of staffing levels.
 - (b) The Residence shall have sufficient staffing at all times to meet the scheduled and reasonably foreseeable unscheduled Resident needs as required by the Residents' assessments and service

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plans on a 24-hour per day basis. The Residence's staffing shall be sufficient to respond promptly and effectively to individual Resident emergencies. The Residence shall have a plan to secure staffing necessary to respond to emergency, life safety and disaster situations affecting Residents.

- (5) Special Care Residence Staffing. The Special Care Residence shall have sufficient staff qualified by training and experience awake and on duty at all times to meet the 24-hour per day scheduled and reasonably foreseeable unscheduled needs of all Residents of the Special Care Residence based upon the Resident assessments and service plans. The Special Care Residence's staffing shall be sufficient to respond promptly and effectively to individual Resident emergencies. For the purposes of this section, it shall never be considered sufficient to have less than two staff members in a Special Care Residence.

- (6) Emergency Situations. The Residence shall have a plan to secure staffing necessary to respond to emergency, safety and disaster situations affecting Residents.

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- (7) Special Care Residence Manager. A Special Care Residence must designate an individual who will be responsible for the operations of the Special Care Residence. The Manager of a Special Care Residence shall be at least 21 years of age, must have a minimum of two years' experience working with elders or disabled individuals, knowledge of aging and disability issues, demonstrated experience in administration, and demonstrated supervisory and management skills. The Manager must also have a Bachelor's degree or equivalent experience in human services management, housing management or nursing home management. The Manager must be of good moral character, and must never have been convicted of a felony.

12.07: Training Requirements

The purposes of the requirements of 651 CMR 12.07 are to ensure employees of Assisted Living Residences have a clear understanding of their jobs and the way in which their work intersects with and supports the work of other employees, of the policies and procedures of the Residence, of the rights of the Residents, and of the particular and distinctive service needs and health concerns of the Residents. All curricula for training should reflect current standards of practice and care, be designed to enhance the professionalism of the employees, and to enable employees to provide good service. Training requirements may be satisfied by such means as practical demonstration, lectures, lectures with accompanying role playing, video with facilitated discussion, and other generally accepted techniques. No more than two of the seven hours required for orientation may be conducted by un-facilitated media presentations by such means as video or audio. Instructors and facilitators shall be appropriately qualified by training or demonstrated experience. The Residence shall maintain documentation in the employee's personnel file regarding the completion of training or eligibility for any exemption.

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- (1) General Orientation. Prior to active employment, all staff and contracted providers who will have direct contact with Residents and all food service personnel must receive a seven-hour orientation which includes the following topics:

- (a) Philosophy of independent living in an Assisted Living Residence;
- (b) Resident Bill of Rights;
- (c) Elder Abuse, Neglect and Financial Exploitation;

- (d) Residence policies and procedures related to disaster and emergency preparedness;
- (e) Communicable diseases, including but not limited to, AIDS/HIV and Hepatitis B;
- (f) Infection control in the Residence and the principles of universal precautions based on OSHA Guidelines;
- (g) Communication Skills;
- (h) Review of the aging process;
- (i) Dementia/Cognitive Impairment including a basic overview of the disease process, communication skills and behavioral management;
- (j) Resident Health and related problems;
- (k) General overview of the employee's specific job requirements;
- (l) The Residence's policy on emergency response to acute health issues, and first aid; and
- (m) Sanitation and Food Safety.

(2) Additional General Orientation Requirements.

- (a) At least one hour of general orientation training shall be devoted to the topic of elder abuse, neglect, and financial exploitation.
- (b) At least two hours of general orientation training shall be devoted to the topic of dementia and cognitive impairments. All curricula for training related to dementia shall reflect current standards of practice and care. Deleted: G
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- (c) In addition to the requirements relative to the general orientation set forth in 651 CMR 12.07(1)(a) through (m), all personnel providing Personal Care Services shall receive at least one additional hour of orientation devoted to the topic of Self-administered Medication Management. Deleted: G
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- (d) Both the Residence Manager and Service Coordinator shall receive an additional two-hour training devoted to dementia care topics.
- (e) A Residence may include the use of techniques such as the shadowing of more experienced employees during the first five days of an employee's tenure.

(3) Orientation for Staff Working Within Special Care Residences. In addition to completing requirements for general orientation as set forth under 651 CMR 12.07(1)(a) through (m), all new employees who work within a Special Care Residence and have direct contact with Residents must receive seven hours of additional training on topics related to the specialized care needs of the Resident population (e.g., communication skills, creating a therapeutic environment, dealing with difficult behaviors, competency, sexuality, and family issues). Deleted: G
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(4) Ongoing In-service Education and Training.

- (a) A minimum of ten hours per year of ongoing education and training is required for all employees, with at least two hours on the specialized needs of Residents with Alzheimer's disease and related dementia.
- (b) Employees working in a Special Care Residence must receive an additional four hours of training per year related to the Residents' specialized needs. Such training shall include the development of communications skills for Residents with dementia.
- (c) In addition to the general ten hour continuing education requirement for all employees, Residence Managers shall complete an additional five hours of training which shall be intended to complement the individual's background and experience. Credits for completing

annual continuing education requirements for Residence managers may be transferable to other Residences.

- (d) No more than fifty percent of the ongoing training requirement may be conducted by unfacilitated media presentations by such means as video or audio.

- (e) Upon submitting proof in a manner and form prescribed by EOE, training received within the past 18 months at another Assisted Living Residence, a similar facility or agency may be used to satisfy the requirements of 651 CMR 12.07. Satisfaction of the requirements of the general orientation shall not be used to fulfill the requirements of this section.

- (f) Specialized Training Requirements.

1. All staff providing assistance with Personal Care Services shall be trained in the Residence's policy on emergency response to acute health issues and first aid, and must also complete at least one hour of ongoing education and training per year on the topic of Self-administered Medication Management; and

2. All employees and providers shall receive ongoing in-service education and training, designed to ensure orientation training is reinforced, from among the following topics:

- a. Behavior management, including prevention of aggressive behavior and de-escalation techniques (mandatory);
- b. Defining, recognizing and reporting elder abuse (mandatory);
- c. Communication and teamwork;
- d. The aging process, including physical and cognitive changes;
- e. The causes and prevention of falls, and related injuries;
- f. The effects of dehydration;
- g. Alzheimer's disease and cognitive impairments;
- h. Conflict resolution;
- i. Resident rights;
- j. Self-administered Medication Management;
- k. Death and dying;
- l. Maintaining skin integrity;
- m. Nutrition;
- n. Emergency procedures; and
- o. Training which addresses topics required in the general orientation.

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- (5) Each residence shall conduct an annual training needs assessment to prepare the curriculum for its required training and establish a process by which it will evaluate the efficacy of its training program.

- (6) Personal Care Services Provider Training Requirements. Assisted Living Residence staff and contracted providers of Personal Care Services must complete an additional 54 hours of training prior to providing Personal Care Services to a Resident, 20 hours of which must be specific to the provision of Personal Care Services. The 20 hours of Personal Care training must be conducted by a qualified Registered Nurse with a valid Massachusetts license. The 54 hours of training must include the following topics:

- (a) Personal hygiene;
- (b) The effects of dehydration;
- (c) Maintaining skin integrity;
- (d) Self-administered Medication Management;

- (e) Elimination;
- (f) Nutrition;
- (g) Human Growth, Development and Aging;
- (h) Family Dynamics;
- (i) Grief, Loss, Death and Dying;
- (j) Mobility;
- (k) Maintenance of a Clean, Safe and Healthy Environment;
- (l) Home Safety; and
- (m) Assistance with Appliances.

Documentation of completion of the 54-hour training for Assisted Living Residences staff and contract providers who provide Personal Care Services shall be transferable for each employee from one Residence to another.

- (7) Introductory Visit and Review. Prior to or within 48 hours after the provision of Personal Care Services to a Resident, a nurse shall review the Resident's service plan with all relevant personal care workers. This review may be conducted in the Resident's Unit or at another appropriate location within the Residence, as determined by the nurse. The personal care workers must demonstrate competence in the assigned personal care tasks (including Self-administered Medication Management) in the Resident's service plan. Such competence may be demonstrated either through a verbal review of these tasks or, if deemed necessary by the nurse, by the demonstrated performance of the tasks by such workers. An Introductory Visit shall also be conducted and documented in the Resident's record whenever the Resident's personal care needs change significantly, as determined by the nurse. Such documentation shall be kept current.

- (8) Supervision. A qualified nurse shall, at least twice per year, evaluate the Personal Care Services provided by personal care staff of the Residence or by contracted providers. A written record of the staff or provider's performance of personal care skills shall be completed after each evaluation and shall be kept in the employee's personnel file. Personal care staff who provide Self-administered Medication Management shall also be evaluated on their awareness of and compliance with SAMM regulations and the applicable Residence policies and procedures.

- (9) Exemptions. The following individuals are exempt from Personal Care Services Provider Training Requirements as set forth in 651 CMR 12.07(4). However, these individuals must complete the general orientation and Ongoing In-service Education and Training as set forth in 651 CMR 12.07(1), (2), and (3).

- (a) Registered Nurse (RN) and a Licensed Practical Nurse (LPN) with a valid license in Massachusetts;
- (b) Nurse's Aides with documentation of successful completion of nurse's aide training;
- (c) Home Health Aides with documentation of having successfully completed the Certified Health Aide training program; and
- (d) Personal Care Homemakers with documentation of having successfully completed a Personal Care Homemaker training program (60 Hours).

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- (10) Food Service Personnel. Before commencing employment in an Assisted Living Residence, the person(s) managing the dietary department (e.g. food services manager and chef) must complete a food service sanitation course which meets the requirements of 105 CMR 590.003(A)(2).

12.08:Resident Rights and Required Disclosures

Prior to scheduling a formal meeting with a prospective Resident, the Residence shall inform him or her of the right to be accompanied by a Legal Representative, Resident Representative, or other advisor. During its first formal meeting with a prospective Resident, the Residence shall deliver to and verbally review with the prospective Resident a consumer guide developed by EOEA and the Disclosure of Rights and Services required by 651 CMR 12.08(3), which incorporates the provisions of 651 CMR 12.08(1). At the time of or prior to the execution of the Residency Agreement or the transfer of any money to a Sponsor by or on behalf of a prospective Resident, whichever first shall occur, the Sponsor shall deliver to and verbally review with the prospective Resident, the person with whom the contract is entered into, and, if applicable, the prospective Resident's Legal Representative a copy of the Residency Agreement, which shall state all applicable costs and terms of payment, services offered and not offered, shared risks, and all other important terms and conditions of the Agreement. All documents shall be written in plain language and published in typeface no smaller than 14 point type.

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(1) Resident Rights. Every Resident of an Assisted Living Residence shall have the right to:

- (a) Live in a decent, safe, and habitable residential living environment;
- (b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy;
- (c) Privacy within the Resident's Unit subject to rules of the Assisted Living Residence reasonably designed to promote the health, safety and welfare of Residents;
- (d) Retain and use his or her own personal property, space permitting, in the Resident's living area so as to maintain individuality and personal dignity;
- (e) Private communications, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of her or his choice;
- (f) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community;
- (g) Directly engage or contract with licensed or certified health care providers to obtain necessary health care services in the Resident's Unit or in such other space in the Assisted Living Residence as may be available to Residents to the same extent available to persons residing in their own homes,; and with other necessary care and service providers, including, but not limited to, the pharmacy of the Resident's choice subject to reasonable requirements of the Residence. The Resident may select a medication packaging system within reasonable limits set by the Assisted Living Residence. Any Assisted Living Residence policy statement that sets limits on medication packaging systems must first be approved by EOEA;
- (h) Manage his or her own financial affairs, unless the Resident has a Legal Guardian or other court-appointed representative with the authority to manage the Resident's financial affairs;
- (i) Exercise civil and religious liberties;
- (j) Present grievances and recommended changes in policies, procedures, and services to the Sponsor, Manager or staff of the Assisted Living Residence, government officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to representatives of the Assisted Living Ombudsman program established under M.G.L. c. 19D, s. 7, the Elder Protective Services program established under M.G.L. c.

19A, s.s. 14 through 26 and the Disabled Persons Protection Commission (DPPC) established under M.G.L. c. 19C, *et seq.*;

- (k) Upon request, obtain from the Assisted Living Residence, the name of the Service Coordinator or any other persons responsible for his or her care or the coordination of his or her care;
- (l) Confidentiality of all records and communications to the extent provided by law;
- (m) Have all reasonable requests responded to promptly and adequately within the capacity of the Assisted Living Residence;
- (n) Upon request, obtain an explanation of the relationship, if any, of the Residence to any health care facility or educational institution to the extent the relationship relates to his or her care or treatment;
- (o) Obtain from a person designated by the Residence a copy of any rules or regulations of the Residence which apply to his or her conduct as a Resident;
- (p) Privacy during medical treatment or other rendering of services within the capacity of the Assisted Living Residence;
- (q) Informed consent to the extent provided by law;
- (r) Not be evicted from the Assisted Living Residence except in accordance with the provisions of landlord/tenant law as established by M.G.L. c. 186 or M.G.L. c. 239 including, but not limited to, an eviction notice and utilization of such court proceedings as are required by law;
- (s) Be free from Restraints;
- (t) Receive an itemized bill for fees, charges, expenses and other assessments for the provision of Resident services, Personal Care Services, and optional services;
- (u) Have a written notice of the Residents' Rights published in typeface no smaller than 14 point type posted in a prominent place or places in the Assisted Living Residence where it can be easily seen by all Residents. This notice shall include the address, and telephone number of the EOE Assisted Living Ombudsman Program, and the telephone number of the Elder Abuse Hotline; and
- (v) Be informed in writing by the Sponsor of the Assisted Living Residence of the community resources available to assist the Resident in the event of an eviction procedure against him or her. Such information shall include the name, address and telephone number of the Assisted Living Ombudsman Program.

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(2) Residency Agreement.

- (a) The Residency Agreement shall include, at a minimum, the following:
 1. Charges, expenses and other assessments for the provision of Resident services, Personal Care Services, Lodging and meals;
 2. The agreement of the Resident to make payment of the charges specified;
 3. Arrangements for payment;
 4. A Resident grievance procedure which meets the requirements of 651 CMR 12.08(1)(j);
 5. The Sponsor's covenant to comply with applicable federal and state laws and regulations concerning consumer protection and protection from abuse, neglect and financial exploitation of the elderly and disabled;
 6. The conditions under which the Residency Agreement may be terminated by either party, including criteria the Residence may use to determine that any of those conditions has been met, and the length of the required notice period for termination of the Residency Agreement;

7. Reasonable rules for the conduct and behavior of staff, management and the Resident;
8. The Residents Rights required by 651 CMR 12.08(1);
9. A clear explanation of the services included in any fees, a description of all other bundled services as well as an explanation of other services available at an additional charge;
10. An explanation of any limitations on the services the Residence will provide, specifically including any limitations on services to address specific Activities of Daily Living and behavioral management. Such explanation shall also include a description of the role of the nurse(s) employed by the Residence, and the nursing and personal care worker staffing levels;
11. An explanation of the eligibility requirements for any available subsidy programs, including a statement of any costs associated with services beyond the scope of the subsidy program for which the Resident or his or her Legal Representative would be responsible;
12. The refund policies for Administrative Fees, deposits, and other charges are refundable; and
13. A copy of the Residence's medication management policy: its Self-administered Medication Management (SAMM) policy, including its policy on assistance with as-necessary or PRN medication when part of the SAMM plan; and, if applicable, Limited Medication Administration.

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If the Disclosure of Rights and Services required by 651 CMR 12.08(3) fully states all of the items required by subsections 651 CMR 12.08(2)(a) 4., 7., 8., 10., 11. and 13., the Residency Agreement may, incorporate those requirements by reference.

- (b) The Residency Agreement may include the agreement of the Sponsor to provide or arrange for the provision of additional services, including, but not limited to, the following:
 1. Barber and beauty services, sundries for personal consumption, and other amenities; and
 2. Local transportation for medical and recreational purposes.
- (c) The Residency Agreement shall be for a term not to exceed one year and may be renewable upon the agreement of both parties.
- (d) The Residency Agreement shall be for a single or double living Unit in the Residence with lockable entry doors on each Unit which meet the bathroom, Bathing Facility and kitchenette requirements of 651 CMR 12.04(1).
- (e) A Residency Agreement for a Residence receiving funding through MassDevelopment pursuant to M.G.L. c. 23A, *et seq.*, which otherwise meets the requirements of 651 CMR 12.08(2), may be executed for an initial period not to exceed 13 months.
- (f) A Resident may voluntarily agree to vacate his or her Unit in accordance with his or her Residency Agreement. A Resident may not be evicted from the Resident's Unit following termination of the Residency Agreement except in accordance with the provisions of landlord/tenant law as set forth in M.G.L. chs. 186 and 239.

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(3) Disclosure of Rights and Services. The disclosure statement shall include, at a minimum, the following:

- (a) The number and type of Units the Residence is certified to operate;
- (b) The number of staff currently employed by the Residence, by shift, an explanation of how the Residence determines staffing, and the availability of overnight staff, awake and asleep, and

shall provide this information separately for any Special Care Residence within the Residence;

- (c) A copy of the list of Residents' Rights set forth in 651 CMR 12.08(1);
- (d) An explanation of the eligibility requirements for any subsidy programs including a statement of any additional costs associated with services beyond the scope of the subsidy program for which the Resident or his or her Legal Representative would be responsible. This explanation should also state the number of available Units, and whether those Units are shared;
- (e) A copy of the Residence's medication management policy, its Self-administered Medication Management policy for dealing with medication that is prescribed to be taken "as necessary", and an explanation of its Limited Medication Administration policy;
- (f) An explanation of any limitations on the services the Residence will provide, including, but not limited to, any limitations on specific services to address Activities of Daily Living and any limitations on behavioral management;
- (g) An explanation of the role of the nurse(s) employed by the Residence;
- (h) An explanation of entry criteria and the process used for Resident assessment;
- (i) statement of the numbers of staff who are qualified to administer cardio pulmonary respiration (CPR), and the Residence's policy on the circumstances in which CPR will be used;
- (j) An explanation of the conditions under which the Residency Agreement may be terminated by either party, including criteria the Residence may use to determine to that any of those conditions has been met, and the length of the required notice period for termination of the Residency Agreement;
- (k) An explanation of the physical design features of the Residence including that of any Special Care Residence;
- (l) An illustrative sample of the Residence's service plan, an explanation of its use, the frequency of review and revisions, and the signatures required;
- (m) An explanation of the different or special types of diets available;
- (n) A list of enrichment activities, including the minimum number of hours provided each day;
- (o) An explanation of the security policy of the Residence, including the procedure for admitting guests;
- (p) A copy of the instructions to Residents in the Residence's Disaster and Emergency Preparedness Plan;
- (q) A statement of the Residence's policy and procedures, if any, on the circumstances under which it will, with the member's permission, include family members in meetings and planning;
- (r) Each Special Care Residence shall also provide a written statement describing its special care philosophy and mission, and explaining how it implements this philosophy and achieves the stated mission.
- (s) If a Residence allows non-Residents to use any of its facilities, such as a swimming pool, gymnasium or other meeting or function room, it shall disclose the fact of such usage to its Residents. Said disclosure shall:
 - 1. inform the residents of the existence of non-regulated programming on site;
 - 2. disclose the amount of interaction or shared use of the facilities; and,
 - 3. describe any resultant impact on Residence staffing.

12.09: Compliance Reviews of Assisted Living Residences

- (1) Purpose. EOEa or its authorized designee shall conduct a compliance review of an Assisted Living Residence prior to the issuance of any initial or renewal Certification to determine compliance with St. 1994, c. 354 and 651 CMR 12.00. An authorized designee shall not be a Sponsor of an Assisted Living Residence.
- (2) Frequency. EOEa or its authorized designee shall conduct compliance reviews of Assisted Living Residences no less than once every two years. In addition, EOEa may conduct a compliance review any time it has cause to believe that an Assisted Living Residence is in violation of an applicable section of St. 1994, c. 354 or any applicable EOEa regulation. An authorized designee shall not be a Sponsor of an Assisted Living Residence.
- (3) Compliance Review Requirements. A compliance review shall include, at a minimum, the following:
- (a) A review of the operating plan and an inspection of the common areas of the Assisted Living Residence. The inspector may, in his or her discretion, interview the Applicant or Sponsor, Manager, staff and Residents of the Assisted Living Residence. Interviews with Residents shall be conducted privately and shall be confidential;
 - (b) An inspection of the living quarters of any Resident, but only with the Resident's prior consent;
 - (c) An examination of any and all documents within a Resident's record, including service plans and written progress reports, incident reports (or similar document), Residency Agreement, and any other financial or contractual agreements specific to the Resident. The Resident may give consent in writing, on a form developed by EOEa, orally, or by a sign of affirmation if the Resident is not able to give consent by other means. Consent may include consent to photocopy such materials. If consent is obtained by a means other than writing, confirmation of the consent shall be written in the review record;
 - (d) A review of staff and contracted provider records, including personnel files;
 - (e) Review of all other books, records, and other documents maintained in relation to the operations of the Residence; and
 - (f) A review of the quality improvement and assurance plans, including Resident satisfaction surveys.
- Refusal to grant EOEa timely access to Residents; staff; all books, records, and other documents maintained regarding the operations of the Residence shall constitute valid basis to suspend, revoke or deny an application for an initial or renewal Certification. EOEa shall be authorized to photocopy such materials.
- (4) Compliance Review Reports, Findings and Responses. Whenever a review is conducted, EOEa or its designee shall prepare written findings summarizing all pertinent information obtained during the review and shall not disclose confidential, private, proprietary or privileged information obtained in connection with the review.
- (a) Notice of Compliance. If EOEa finds that the Applicant or Sponsor is in compliance with the Act, 651 CMR 12.00, EOEa shall mail a copy of its findings to the Applicant or Sponsor within ten days after the compliance review is completed.
 - (b) Notice of Noncompliance. If EOEa finds that the Applicant or Sponsor is not in compliance with the Act, 651 CMR 12.00, EOEa shall forward a notice of noncompliance to the

Deleted: EOEa or its authorized designee shall conduct reviews of Assisted Living Residences, at any time, but no less than once every two years

Deleted: . to determine compliance with St. 1994, c. 354 and 651 CMR 12.00. Authorized designees shall not be a Sponsor of an Assisted Living Residence and may include, a non-profit agency, one or more Home Care Corporations as defined in M.G.L. c. 19A, s. 4(c), a combination of Home Care Corporations as determined by EOEa, or a separate state agency. ¶ EOEa or its authorized designee shall conduct a compliance review prior to the issuance of any initial or renewal Certification. EOEa may conduct a compliance review any time it has cause to believe that an Assisted Living Residence is in violation of an applicable section of St. 1994, c. 354 or any applicable EOEa regulation.

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Applicant or Sponsor. The notice shall describe the noncompliance with particularity, indicate the specific portion of the law(s) or regulation(s) which have been violated, and shall include the corrective action to be taken by the Applicant or Sponsor within a time period deemed reasonable by the Secretary. The notice of noncompliance also shall include a description of the action that may be taken by the Secretary if the corrective action is not completed. The notice shall be delivered by hand or by certified mail, return receipt requested, or by first-class mail postage prepaid, and by email, within ten days after completion of the review of the Assisted Living Residence.

- (c) **Corrective Action.** Whenever EOEa finds, upon inspection or through information in its possession, that a Residence is not in compliance with any law(s) or regulation(s) governing such program, EOEa may, in its discretion, require the Residence to implement any corrective action it deems necessary, including:
1. Ceasing the enrollment of new Residents;
 2. Reducing the number of Residents served;
 3. Changing the staffing patterns or staffing-levels, or staffing qualifications; or
 4. Requiring additional training of the manager or staff.
 5. Factors which may be considered by EOEa in determining the nature of the corrective action to be imposed include but are not limited to:
 - a. Any instances of noncompliance at the Residence;
 - b. The risk that the instances of noncompliance present to the health, safety, and welfare of residents;
 - c. The nature, scope, severity, degree, number, and frequency of the instances of noncompliance;
 - d. The Applicant or Sponsor's failure to correct the noncompliance;
 - e. Any ongoing pattern of non-compliance;
 - f. Any previous enforcement action(s); and
 - g. The results of any past corrective action plans or orders.
- (d) **Modification, Suspension, Revocation or Refusal to Issue or Renew Certification.** EOEa may deny, revoke, suspend, modify or refuse to issue or renew a Certification in any case in which it finds any of the following:
1. There has been a failure or refusal to comply with any applicable law, regulation, corrective order, notice of sanction, or suspension agreement;
 2. The Applicant or Sponsor submitted any misleading or false statement or report required under 651 CMR 12.00 *et seq.*;
 3. The Applicant or Sponsor refused to submit any report or make available any records required under 651 CMR 12.00 *et seq.*;
 4. The Applicant or Sponsor refused to admit, at a reasonable time, any employee of EOEa authorized by the Secretary to investigate or inspect, in accordance with 651 CMR 12.00 *et seq.*; or
 5. The Applicant or Sponsor failed to obtain Certification prior to opening a program or residence or prior to changing the location of a program or residence except as allowed in 651 CMR 12.00.

- (e) Effect. An Applicant or Sponsor shall not qualify for a Certification from EOEa for five years after a final agency decision to revoke or refuse to issue or renew a Certification held by the Applicant or Sponsor. Thereafter, an Applicant or Sponsor shall be eligible only if he or she can demonstrate a significant change in circumstances. EOEa may, at its sole discretion, consider an application for Certification prior to the expiration of the five-year period, if it determines that a significant change in circumstances has occurred. Such exercise of its discretion shall not be appealable.

(f) Emergency Action.

1. EOEa may, in its discretion, modify, suspend, revoke, or refuse to renew a Residence's Certification without prior notice if it finds at the time of the review, or at any other time, that the Applicant or Sponsor is not in compliance with M.G.L. c. 19D or its regulations and that such non-compliance presents an immediate threat to the health safety or welfare of Residents. The Applicant or Sponsor shall be notified of any such modification, suspension, or revocation of a Certification by written notice, hand delivered, or mailed to the applicant or sponsor via first class mail, certified or registered, return receipt requested. Deleted: the Act
2. Before imposing a modification, suspension, revocation, or refusing to renew a Residence's Certification, EOEa may require immediate corrective action by the Residence. In such cases, EOEa will identify the nature of the correction and the time frame in which to make those corrections. The corrective action will be directly based upon the nature of the findings, and the timeframe within which the action must be taken will be reasonable. Deleted: c
3. The modification, suspension, or revocation of the Certification or refusal to renew the Certification shall remain in effect pending resolution through the Administrative Review and hearing process.

- (g) Response to Notice. The Applicant or Sponsor shall respond in writing to EOEa within ten days after receiving the notice of non-compliance, and indicate its agreement or disagreement with the EOEa findings. Failure of the Applicant or Sponsor to respond within the ten-day period to the Notice of Noncompliance will be deemed to be agreement with the findings.

1. Agreement with the findings requires the Applicant or Sponsor to submit to EOEa, within a time period acceptable to EOEa, a signed written plan of correction for each finding stated in the report. The Sponsor shall include the following information in the plan of correction, for each cited deficiency:
 - a. A specific plan of what will be or was done to correct the problem;
 - b. A description of what will be done to prevent recurrence of this problem, or problems of this type;
 - c. Designation of the individual(s) who will be responsible for monitoring the correction to ensure the problem does not recur; and
 - d. The date by which lasting correction will be achieved.

After EOEa has received a complete corrective action plan it will review it and notify the Applicant or Sponsor of whether the plan is acceptable. If it is, EOEa will timely conduct a review of the Residence.

2. If an Applicant or Sponsor disagrees with the EOEa finding(s) or action, an Administrative Review may be initiated pursuant to 651 CMR 12.10.

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12.10: Administrative Review: Procedure.

If an Applicant or Sponsor disagrees with the EOEa finding(s) or action, it may request an Administrative Review by submitting its request, via certified mail, return receipt requested, together with a detailed written rebuttal of the findings within ten days of receipt of the notice of noncompliance.

Deleted: Failure of the Applicant or Sponsor to respond within the ten-day period to the Notice of Noncompliance will be deemed to be agreement with the findings. After EOEa has received a complete corrective action plan it will review it and notify the Applicant or

Deleted: Sponsor of whether the plan is acceptable. If it is, EOEa will timely conduct a review of the Residence.

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(1) EOEA Review.

- (a) Consultation. The Applicant or Sponsor may consult with the EOEa investigator about the findings and any action undertaken or proposed by EOEa. This may take the form of an exit conference at the conclusion of the compliance review, and, if this conference has been held prior to issuance of the findings, the administrative review process will begin with the Informal Review.
- (b) Informal Review. An Applicant or Sponsor who disagrees with an EOEa Compliance Review finding or the proposed action following the consultation or after issuance of the findings, may request informal review by the Director of the Assisted Living Certification Unit. The request for Informal Review must be submitted within ten days of the issuance of the findings, or ten days from the consultation, whichever is later. The Informal Review shall be scheduled within ten days of the receipt of the request for review, and shall consist of an informal presentation of the position of the Applicant or Sponsor, and review of any applicable written documents. If the matter is settled, the agreement shall be reduced to writing. If it is not, a written decision shall be issued within ten days.

- (c) Informal Hearing. An Applicant or Sponsor who disagrees with the decision of the Informal Review may request an Informal Hearing before an Assistant Secretary or his or her designee. Such request shall be delivered by hand or by certified mail, return receipt requested, and must be submitted within ten days of the issuance of the Informal Review decision. EOEa shall schedule an Informal Hearing within 15 days after receipt of the request for Informal Hearing. The Informal Hearing shall consist of an informal presentation of the position of the parties and any applicable written documents. If the matter is settled at the Informal Hearing, EOEa and the Applicant or Sponsor shall reduce the settlement to writing. If the matter is not settled at the Informal Hearing, an Assistant Secretary or his or her designee shall review all material presented and within 30 days after the Informal Hearing, forward a decision to the Applicant or Sponsor.

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(2) Formal Hearing.

- (a) Initiation of Appeal. When EOEa has denied, revoked, suspended, or modified Certification, the Applicant or Sponsor may appeal the final decision issued after the Informal Hearing by filing a notice of claim for adjudicatory proceeding with the Division of Administrative Law Appeals pursuant to 801 CMR 1.01 *et seq.*, and by filing a copy of the notice with the General Counsel of EOEa. The appeal shall be filed no later than 21 days after the decision on the Informal Hearing is issued.
- (b) Scope of Review. If the hearing officer designated by the Division of Administrative Law Appeals finds by substantial evidence any single ground for denial, revocation, modification,

suspension or refusal to renew an Application or Certification which ground constitutes a failure or refusal to comply with the requirements of M.G.L. c. 19D or 651 CMR 12.00 *et seq.*, the hearing officer shall uphold the decision to deny, revoke, modify, suspend or refuse to renew such Application or Certification.

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- (c) Decision and Action by the Secretary of EOEa. The decision of the hearing officer shall be a tentative decision under 801 CMR 1.01(11)(c). Within 30 days of receipt of the decision, the Secretary shall render a final decision to approve, modify, or disapprove the hearing officer's decision. The Appellant may submit a written statement to the Secretary concerning the tentative decision within seven days after receiving it, but shall not be entitled to a further hearing before the Secretary. The decision of the Secretary shall be the final administrative decision, and shall bind the parties unless the Appellant commences an action to obtain judicial review within 30 days after the date of the final decision.
- (3) Enforcement. Nothing in this part shall limit EOEa's ability to exercise its responsibility and authority to enforce the disputed regulation during the Administrative Review process. All completed reports, responses, and notices of final action may be made available to the public at the department during business hours together with the responses of the applicants or the sponsors thereto. Nothing in this part shall limit EOEa's responsibility to periodically review the Residence to determine whether it has achieved compliance with the statutory and regulatory requirements, and, if so, to issue the Certification subject to reasonable conditions.
- (4) Notification. Whenever EOEa initiates an action to deny, suspend, modify, refuse to renew or revoke a Certification pursuant to 651 CMR 12.10(2), (3), or (4), it shall transmit a notice to each Resident, or Legal Representative and appropriate governmental agencies which:
- (a) Describes the action to be taken;
 - (b) Suggests the general timetable for the enforcement process and its possible effect on Residents; and
 - (c) Confirms that a second notice will be transmitted if the relocation of the Residents is imminent.
- Whenever it appears likely that a Certification denial or revocation action commenced pursuant to 651 CMR 12.10(2) or (4) will result in the need for relocation of Residents, EOEa shall transmit a second notice to each Resident, or Legal Representative and appropriate governmental agencies informing each party of:
- (d) The status of the enforcement action;
 - (e) Residents' rights under the Residency Agreement; and
 - (f) The availability of information to Residents from EOEa and other sources regarding available legal assistance and assistance in relocation.

12.11: Right of Entry by EOEa and Contracting Agencies

Any duly designated officer or employee of EOEa shall have the right to enter and inspect, at any time without prior notice, the common areas and office areas of any Assisted Living Residence for which an Application has been received or for which Certification has been issued. Any Application shall constitute permission for such entry and inspection. Inspections of any Unit shall be with the oral or written consent of the Resident.

12.12: Penalties for Uncertified Operation

- (1) Any person operating an Assisted Living Residence without Certification under chapter 19D of the M.G.L. shall be subject to liability for a civil penalty of not more than \$500.00 for each day of such violation assessable by the Superior Court.
- (2) Any such violation shall constitute grounds for refusing to grant or renew, modifying or revoking the Certification of the Assisted Living Residence or of any part thereof.
- (3) Notwithstanding the existence or use of any other remedy, EOEA may, in the manner provided by law, maintain an action in the name of the Commonwealth for an injunction or other process against any person to restrain or prevent the operation of an Assisted Living Residence without Certification under M.G.L. c. 19D.
- (4) Any person who knowingly refers an individual for residency to an uncertified Assisted Living Residence shall be subject to a civil penalty of not more than \$500.00 for each such violation assessable by the Superior Court.

12.13: Advisory Council

Notwithstanding any general or special law to the contrary, an advisory council shall be established within EOEA. The advisory council shall advise the Secretary of EOEA relating to the regulations authorized under M.G.L. c. 19D. The advisory council shall be comprised of nine members, the Secretary of Elder Affairs or his or her designee who shall serve as chairperson, the Director of the Department of Housing and Community Development or his or her designee; the Secretary of Health and Human Services or his or her designee, and six members to be appointed by the Governor upon nomination by the Secretary of Elder Affairs. Of such six nominees, the Secretary shall nominate three persons who represent Resident consumer interests and two persons who represent Sponsors and Managers of the Assisted Living Residence. The advisory council shall by majority vote establish its own rules and procedures. Members of the council shall be appointed for terms of one year each. The council shall meet not less than on a quarterly basis, and it shall prepare a report of its activities, not less than annually. The annual report shall be made available to the public and the General Court.

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12.14: Inapplicability of Certain Laws and Regulations to Assisted Living Residences

In accordance with M.G.L. c. 19D, s. 18(a), premises or portions of premises Certified as Assisted Living Assisted Living Residence shall not be subject to the following laws:

- (a) the determination of need process applicable to health care facilities in the Commonwealth as set forth in M.G.L. c. 111, s.s. 25B through 25H;
- (b) the licensing requirements for hospitals or institutions for unwed mothers or clinics set forth in M.G.L. c. 111, s. 51;
- (c) the patients and Residents rights requirements set forth in M.G.L. c. 111, s. 70E;

- (d) the HTLV-III testing, confidentiality and informed consent requirements applicable to a health care facility under M.G.L. c. 111, s. 70F; however, physicians for health care providers to Assisted Living Residences are subject to these requirements;
- (e) the licensing requirements for convalescent and nursing homes, rest homes, charitable homes for the aged, intermediate care facilities for the mentally retarded and infirmaries maintained in towns (long term care facilities) set forth in M.G.L. c. 111, s. 71;
- (f) the requirements for deposit of inpatient or Resident funds for a long term care facility as set forth in M.G.L. c. 111, s. 71A;
- (g) the requirements for classification of long term care facilities set forth in M.G.L. c. 111, s. 72;
- (h) the requirements for lighting and ventilation for convalescent or nursing homes set forth in M.G.L. c. 111, s. 72C;
- (i) the requirements for telephone access for long term care facilities set forth in M.G.L. c. 111, s. 72D;
- (j) the requirements for notices of violations, plans of correction, penalties and enforcement for long term care facilities set forth in M.G.L. c. 111, s. 72E;
- (k) the patient abuse reporting requirements applicable to long term care facilities under M.G.L. c. 111, s.s. 72H through 72L;
- (l) the receivership requirements for long term care facilities set forth in M.G.L. c. 111, s.s. 72M through 72U;
- (m) the requirements for storage space for long term care facility residents set forth in M.G.L. c. 111, s. 72V;
- (n) the requirements for long term care facility nurses aide training set forth in M.G.L. c. 111, s. 72W;
- (o) the requirements for no smoking areas in nursing homes as set forth in M.G.L. c. 111, s. 72X;
- (p) the requirements for nursing pool regulations for long term care facilities set forth in M.G.L. c. 111 s. 72Y;
- (q) the penalties regarding unlicensed operation of a long term care facility under M.G.L. c. 111, s. 73;
- (r) the exemption from Department of Public Health licensing or inspection rules regarding long term care facilities operated by the First Church of Christ, Scientist in Boston set forth in M.G.L. c. 111, s. 73A;
- (s) the requirements for long term care facilities operated for duly ordained priests, or for members of the religious orders of the Roman Catholic Church in their own locations, buildings, Assisted Living Residence or headquarters to provide care for such priests or members of said religious orders set forth in M.G.L. c. 111, s. 73B
- (t) the requirement for a special permit under local zoning by-laws for the use of structures as shared elderly housing upon the issuance of a special permit, and the six person occupancy, age and other conditions deemed necessary for such special permits to be granted as set forth in the seventh full paragraph of M.G.L. c. 40A, s. 9.

REGULATORY AUTHORITY

651 CMR 12.00: M.G.L. c. 19A, § 6; St. 1994, c. 354, § 10.